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BEFORE THE STATE AUDITOR;
EX-OFFICIO COMMISSIONER OF SECURITIES AND INSURANCE
HELENA, MONTANA

IN THE MATTER OF:) CASE NO. C-08-31-05-052
)
RYAN BECK & CO.)
220 South Orange Ave.) NOTICE OF PROPOSED AGENCY
Livingston, New Jersey 07039,) DISCIPLINARY ACTION
A Broker-Dealer firm;) AND OPPORTUNITY FOR HEARING
)
RYAN BECK LIFE AGENCY, INC.,)
650 Madison Ave. 10 th Floor)
New York, New York 10022)
An Insurance Agency;)
)
STEVEN GROSSMAN, individually and)
in his capacity as a salesperson for Ryan)
Beck & Co. and as an insurance producer)
affiliate for Ryan Beck Life Agency;)
RALPH FREYDBERG, individually and in)
his capacity as a branch manager for Ryan)
Beck & Co.; and John and Jane Does 1-5;)
)
Respondents.)

Staff of the Securities and Insurance Departments (Departments) of the office of the State Auditor as Commissioner of Securities of the state of Montana (Commissioner), pursuant to the authority of the Securities Act of Montana, §§30-10-101, *et seq.*, MCA (2003), and the Montana Insurance Code §§33-1-101, *et seq.*, MCA (2003), is proposing to the Commissioner that he take specific action against Ryan Beck & Co. (Ryan Beck), with a principle place of business located at 220 South Orange Ave., Livingston, NJ 07039, Steven Grossman (Grossman), and Ralph Freydborg (Freydborg) named above for violations of the Montana Securities Act and the Montana Insurance Code. The Commissioner has authority to take such action under the

provisions of Sections 30-10-102, 30-10-107, 30-10-201, 30-10-301, 30-10-304, 30-10-305, 30-10-307, 30-10-309, 33-1-102, 33-1-301, 33-1-317, 33-1-1302, 33-17-201, 33-17-1001, and 33-18-102, (2003) MCA.

In particular, the Securities and Insurance Departments (Departments) staff are recommending specific action against Grossman, Freydborg, and Ryan Beck including imposition of appropriate fines, appropriate restitution with interest and revocation or suspension of Respondents' registrations and licenses pursuant to the provisions of the Montana Securities Act and Insurance Code.

Service of process is pursuant to Section 30-10-107 (8) and 33-1-314 (4), MCA.

REASONS FOR ACTION

There is probable cause to believe that the following facts, if true, justify and support such specific action.

ALLEGATIONS

1. The time period relevant to this action is July 2001 through July 2004.
2. Ryan Beck & Co. (Ryan Beck) is a broker-dealer firm with a principle place of business at 220 South Orange Ave., Livingston, N.J, 07039. The firm has been registered in Montana since on or about November 21, 1995, pursuant to the requirements of Montana's Securities Act. Ryan Beck Life Agency, Inc., (Ryan Beck Life) has been licensed as an insurance agency in Montana since on or about February 21, 2002, acting as Ryan Beck's insurance arm for purposes of selling, among other things, variable annuities.
3. Steven Grossman (Grossman) began employment with Ryan Beck on or about April 29, 2002, when Ryan Beck acquired all of Gruntal & Co.'s sales representatives and client assets under management. Grossman was employed as a salesperson at Ryan Beck's branch

office located in Scarsdale, New York, during the relevant time period. Grossman has been registered as a securities salesperson in Montana since on or about January 18, 2000. Grossman has been licensed as an insurance producer in Montana since on or about February 26, 2002, license number 914616. Grossman was identified as an affiliate on the Ryan Beck Life agency license beginning on or about February 25, 2002.

4. Ralph Freydborg was employed as a branch manager by Ryan Beck at its Scarsdale, NY branch office during the relevant time period. Freydborg was registered as a securities salesperson in Montana from on or about July 5, 1999 to August 30, 2004.

5. On or about August 19, 2004, the Department received a complaint from two (2) Montana residents (Complainants). In their complaint, they allege Grossman excessively traded in their accounts, over-charged on commission, purchased unsuitable investments and misrepresented the level of their margin loans. Additionally, the Complainants alleged Grossman executed unauthorized trades in their accounts and failed to disclose fees in the purchase and sale of securities and annuities.

6. During the relevant time period one Complainant suffered from cancer that required chemo-therapy treatments and surgery. The threat of cancer recurring persists to the present. During the period that this Complainant was receiving the cancer treatments Grossman inserted himself into the Complainants' financial lives with promises of protection of their assets and promises of trustworthiness.

7. The Department investigated the Complainants' allegations using standardized investigation methods, including several requests to Ryan Beck seeking certain documents and written statements from Grossman regarding the allegations by the Complainants, beginning on or about August 19, 2004.

8. Ryan Beck failed to timely respond to requests made by the Department. The Department was required to follow-up on its requests for certain documents with a conference call between Ryan Beck's Chief Compliance Officer and the Department's Bureau Chief, on or about June 27, 2005. A follow-up letter was faxed and a conference call occurred with Ryan Beck's General Counsel and the Department's legal counsel, on or about July 26, 2005. Subsequently on or about July 27, 2005, Ryan Beck complied with the Department's investigation requests.

9. Through its investigation of the complaint, the Department analyzed the documents provided by Ryan Beck, including new account forms, amendments to new account forms, monthly statements, prospectuses, annuity applications, exception reports, correspondence, switch letters, and Ryan Beck's policies and procedures manuals.

10. Grossman managed Complainants' accounts, including one (1) Tenants in Common; one (1) Revocable Trust, two (2) Joint Tenants with Right of Survivorship, two (2) IRA's, one (1) SEP IRA, and one (1) Profit Sharing Plan and Trust¹.

11. Additionally, Grossman purchased four variable annuities for Complainants during the relevant time period. Two of the variable annuities were IRA plans, ING SmartDesign and Venture Vantage. One of those IRA plan variable annuities was managed in the Complainants' Profit Sharing and Trust account, Venture Vantage. One variable annuity, Sun Life, was purchased in or about March 2002, with an additional deposit in or about September 2002, and subsequently sold in or about December 2003.

¹ A profit sharing plan is a defined contribution plan in which the company agrees to make substantial and recurring, though generally discretionary, contributions. Amounts contributed to the plan are invested and accumulate (tax-deferred) for eventual distribution to participants or their beneficiaries either at retirement, after a fixed number of years, or upon the occurrence of disability, death, or termination of employment. Retirement benefits in profit sharing plans are based on the amount in the participant's account at retirement.

12. Variable annuities are both insurance products (Cf. Title 33, Chapter 20, Part 6, MCA) and a security (Cf. §§ 30-10-103 (22), (23), and 33-20-602, MCA), requiring licensure pursuant to requirements of both the Insurance Code and the Securities Act prior to offering or selling these products to Montana consumers/investors. Variable annuities typically require a lengthy hold period with expensive surrender penalties and very high commissions.

13. Complainants opened a joint account, on or about January 29, 2002. On their new account form Complainants disclosed an investment objective of long-term growth². Additionally, the new account form indicates a "no" response to the question "Do investment objectives allow speculation?" Approximately \$2,309,365.13 in securities was deposited to this account. These securities included eight (8) class "A" mutual funds, and ten (10) blue-chip stocks included in the Dow Jones Industrial Average. When Grossman was taken off the account in June 2004, a majority of the mutual funds held in the account were "Class B" and the ten (10) original holdings had been sold and replaced with more speculative and volatile stocks in new companies.

14. During the relevant time period, Grossman managed this account as follows:

- There were approximately 1374 transactions, resulting in a trade loss of approximately \$467,011.91;
- No security purchased in this account during the relevant period was held for more than a 12-month period, contrary to the Complainants' investment objectives;

² Long-Term Capital Growth - increases in value over time from appreciation in the asset, typically seasoned, quality stock & stock mutual funds with reinvestment of dividends and capital gains

- Aggregate purchases totaled approximately \$16,271,047.13 with an average account equity of approximately \$772,533.23 demonstrating a turnover rate³ of 21.06 for the period, and an average cost to equity maintenance ratio (CEMR)⁴ of 25.66%, contrary to the Complainants' stated investment objectives;
- Aggregate sales totaled approximately \$16,787,071.91.
- 131 trades occurred in Sepracor resulting in commissions to Grossman and Ryan Beck of approximately \$15,568 and a trade loss to Complainants of approximately \$5,633. Sepracor is a pharmaceutical company, its common stock provides no dividend and has a high BETA ratio⁵, contrary to the Complainants' stated investment objectives. DLJ, Ryan Beck's clearing firm, made a market in Sepracor, causing the

³ According to PIABA, the turnover rate is the number of times the average net equity is used to purchase securities. Volume, rather than cost, is being measured. A turnover rate of 2 creates an inference of churning, a turnover rate of 4 creates a presumption of churning, and a turnover rate of 6 is conclusive of churning. PIABA, Public Investors Arbitration Bar Association, whose mission is to promote the interests of the public investor in securities and commodities arbitration by protecting public investors from abuses in the arbitration process and creating a level playing field for the public investor in securities and commodities arbitration. Courts and arbitrators often rely upon PIABA expertise in cases involving excessive trading.

⁴ CEMR is calculated by dividing the average account equity by the total commissions during a 12-month period. According to PIABA, a CEMR of 4% in an investment account indicates there is an inference of churning; a CEMR of 8% indicates there is a presumption of churning, and a CEMR of 12% is conclusive that excessive trading is occurring.

⁵ Beta ratio is a measure of a security's sensitivity to market movements as represented by the following formula: $\beta_p = R_{pm} (\hat{\sigma}_p / \hat{\sigma}_m)$,

β_p = security beta (i.e., slope of the regression line);

R_{pm} = the correlation coefficient between the security and the market index (or benchmark) (The correlation coefficient is the signed square root of R-squared.);

$\hat{\sigma}_p$ = the observed standard deviation of the security's TWRs over a particular time horizon and compounding interval;

$\hat{\sigma}_m$ = the standard deviation of the market index over the same time horizon and compounding interval.

A security's beta ratio measures the expected change in its return per one percent change in the return on the market. By definition, the beta of a benchmark index is 1.00. Accordingly, a security with a 1.10 beta is expected to perform 10% better than the index in up markets and 10% worse in down markets, assuming all other economic factors remain constant. A low beta means that the security's market-related risk is low.

stock price to be marked up⁶ to a higher rate of sale rather than commissions being charged to the Complainants. "Marking up" stocks in which a firm makes a market can make a transaction more costly than if a straight commission were charged for the transaction;

- 94 trades occurred in KFX, Inc. resulting in commissions to Grossman and Ryan Beck of approximately \$28,772 and a trade loss to Complainants of \$3,423. KFX, Inc. is an energy company. Its common stock provides no dividends and has a high BETA ratio, contrary to the Complainants' stated investment objectives;
- 45 trades occurred in JDS Uniphase, resulting in commissions to Grossman and Ryan Beck of approximately \$5,922 and a trade loss to Complainants of \$6,226. JDS Uniphase is a technology company. Its common stock provides no dividends and it has a high BETA ratio, contrary to the Complainants' stated investment objectives. DLJ, Ryan Beck's clearing firm, made a market in JDS Uniphase, so in lieu of commissions the stock price was marked up;
- Complainants were solicited to purchase or sell approximately 189 individual securities, many of which were in volatile industries including, but not limited to, biotechnology, technology, and natural resources sector securities, contrary to their stated investment objectives;

⁶ A "mark-up" is the difference between an investment's lowest current offering price among dealers and the higher price a dealer charges a customer. Mark-ups occur when dealers act as principals, buying and selling securities from their own accounts, at their own risk, as opposed to brokers receiving a fee for facilitating a transaction.

- A substantial margin account balance⁷ was maintained in the account with an average outstanding loan balance of \$178,406 during the twenty-eight month period with margin loan interest charged to the account in the amount of \$23,760. In or around February 2003, the margin loan balance peaked in the account with a closing month-end loan value of \$426,180.14;
- Complainants allege in their complaint to the Departments they were told on or about April 2004 by Grossman that their margin balance was \$16,000, and were assured by Grossman that he would bring the loan balance to zero. The average margin balance on or about April 2004 was approximately \$149,057. The account still had a margin account balance of \$86,724 when Grossman was taken off the account at the end of June 2004;
- At least 29 different mutual funds were purchased and sold on more than 200 separate occasions, most of which were class "B" shares. Class "B" shares generally include higher expense ratios, contingent deferred sales charges, and no entitlements to breakpoints⁸;
- Grossman solicited Complainants to invest \$836,203.40 in certain Federated Funds, of which only \$77,429.55 were in class "A" shares and the balance were class "B" shares. As a result of Grossman placing Complainants in "B" shares instead of "A" shares, Complainants paid extra sales charges of \$29,875.51;
- While Complainants already owned John Hancock Regional Bank "A" shares in their account, and had entitlements to breakpoints, Grossman began soliciting the purchase

⁷ Margin accounts are created when a brokerage account allows customers to buy securities with money borrowed from the broker (Barron's Dictionary of Finance and Investment Terms, pg. 319).

⁸ Break points in mutual funds are the dollar investment require[d] to make the fundholder eligible for a lower sales charge (Barron's Dictionary of Finance and Investment Terms, pg 62)

of John Hancock Regional Bank "B" shares, including switches from the "A" shares to the "B" shares, which cost Complainants in excess of \$2,561 in additional commissions and fees.

- Grossman also caused Complainants to forego entitlements to breakpoints in the Bear Stearns Insiders Fund, MFS Municipal High Income Fund, Oppenheimer Family of Funds, and the Seligmann Communications and Utilities Fund by purchasing "B" shares; and
- At least 50 individual unit investment trusts⁹ were purchased or sold on more than 300 transactions with minimal hold periods. This type of investment is usually long-term because of its high commissions and fees.
- One variable annuity Grossman solicited for Complainants' purchase, Venture III, was managed as a part of this joint account beginning on or about August 2003. This action created a false sense of the size of the joint account, masking the excessive and unsuitable activity and losses incurred in the account.
- Grossman recommended and placed Complainants in at least 37 different First Trust unit investments in their joint account with aggregate purchase totaling at least \$3,908,605.30. The net return on investment in these trusts was a loss of approximately \$60,140.87 while Grossman and Ryan Beck earned approximately \$136,789.11 in commissions and fees. Furthermore, the average hold period for the First Trust unit investments was approximately 39 days, contrary to the Complainants' stated investment objectives

⁹ These are "investment vehicle[s] that [purchase] a fixed portfolio of income-producing securities, such as corporate, municipal, or government bonds, mortgage-backed securities, common stock, or preferred stock. Units in the trust, which usually cost at least \$1,000, are sold to investors by brokers, for a load charge of about 4%." (Barron's Dictionary of Finance and Investment Terms, pg.633-34)

15. Complainants' opened a profit-sharing plan, on or about July 13, 2001. There is no indication that a new account form listing their investment objectives, risk tolerance, and other relevant factors was signed by either Complainant, when this account was opened. Based on the investment objectives stated in all other investment accounts Complainants had at Ryan Beck, and the nature of a profit-sharing account, the investment objective in this account should be treated as long-term growth. Approximately \$915,024 in securities were transferred into the account along with \$365,983 in cash. The securities transferred into the account included 14 class "A" mutual funds, with no class "B" mutual funds.

16. During the relevant time period, Grossman managed this account as follows:

- Approximately 890 transactions occurred, resulting in a trading loss of approximately \$413,350;
- No security purchased in this account during the relevant period was held for more than a 12-month period, contrary to the Complainants' investment objectives;
- Aggregate purchases totaled approximately \$9,008,741.14 with an average account equity of only approximately \$480,279.50 demonstrating a turnover rate of 18.76, with an average CEMR of 22.27%, contrary to the Complainants' stated investment objectives;
- Aggregate sales totaled approximately \$9,310,313.57;
- There were approximately 135 securities bought or sold, the majority being mutual funds or investment unit trusts;
- There were approximately 25 individual equities bought or sold, many of which were in volatile industries, including but not limited to the pharmaceutical, technology, and energy sectors, contrary to the Complainants' investment objectives;

- At least 43 different mutual funds were purchased and sold on more than 300 separate occasions, most of which were class "B" shares. Class "B" shares generally include higher expense ratios, contingent deferred sales charges, and no entitlements to breakpoints.
- Grossman solicited Complainants to invest approximately \$1,443,457.27 in certain Federated Funds, of which only approximately \$196,120.91 were in "A" shares and the balance were "B" shares. As a result of Grossman placing Complainants in "B" shares instead of "A" shares, Complainants paid in excess of \$51,482.22 in sales charges. They would not have been charged any sales charges or commissions had they invested entirely in "A" shares and received their entitlements to breakpoints with an investment of over \$1,000,000 in Federated Funds;
- Grossman caused Complainants to forego entitlements to breakpoints in the Bear Stearns Family of Funds, John Hancock Family of Funds, Sunamerica Family of Funds, and the Seligmann Communications and Utilities Fund by purchasing "B" shares, in the Complainants' profit-sharing plan; and
- At least 54 individual unit investment trusts were purchased or sold in more than 325 transactions with minimal hold periods. For example, Grossman recommended and placed Complainants in at least 52 different First Trust unit investments with aggregate purchase totaling at least \$4,199,275.64. The net return on investment in these trusts was a loss of approximately \$206,288.88 while Grossman and Ryan Beck earned approximately \$146,927.94 in commissions and fees. Furthermore, the average hold period for the First Trust unit investments was approximately 35 days, contrary to the Complainants' investment objectives.

17. One variable annuity Grossman solicited for Complainants' purchase, Venture Vantage, was managed in the profit sharing plan account beginning in or around August 2003. This variable annuity was also identified in the variable contract as an IRA plan. The management of this annuity in the profit sharing account is the equivalent of placing an IRA within an IRA, creating an undue burden, including surrender fees and tax consequences, on Complainants in obtaining access to those funds, and is grossly unsuitable when one Complainant may realistically need access to these funds for medical expenses. Furthermore, this action of placing the IRA plan variable annuity within the profit sharing account cause Complainants to incur excessive fees as compared to their earlier practice of purchasing class "A" mutual fund investments.

18. One complainant opened an IRA account, on or about January 27, 2002. On the new account form the complainant indicated an investment objective of long-term growth. Additionally, the new account form indicates a "no" response to the question "Do investment objectives allow speculation?" Three class "A" mutual funds valued at approximately \$27,850 were transferred into the account.

19. During the relevant time period, Grossman managed this account as follows:

- There were approximately 50 trades resulting in a loss of approximately \$9,587;
- No security purchased during the relevant time period was held for a period greater than 12 months, contrary to the Complainant's stated investment objectives;
- Total aggregate purchases were approximately \$216,340 with an average account equity of \$20,704.33 demonstrating a turnover rate of 10.45 and an average CEMR of 13.2%, contrary to the Complainant's stated investment objectives;

- There were 17 individual securities bought or sold, 16 of which were mutual funds or unit investment trusts;
- There were 2 purchases and sales of class "B" mutual funds, John Hancock Regional Bank and Bear Stearns Insiders Fund Class. Class "B" shares generally include higher expense ratios, contingent deferred sales charges, and no entitlements to breakpoints. The approximate hold period for the class "B" shares was approximately three (3) months, contrary to the Complainant's stated investment objectives. This type of investment is usually long-term because of its high commissions and fees;
- At least 10 individual unit investment trusts were purchased or sold on more than 39 occasions with minimal hold periods, contrary to the Complainant's stated investment objectives. This type of investment is usually long-term because of its high commissions and fees; and
- Grossman recommended and placed the Complainant in at least 9 different First Trust unit investments with aggregate purchase totaling at least \$149,925.87. The net return on investment in these trusts was a loss of approximately \$6,396.33, while Grossman and Ryan Beck earned approximately \$5,237.79 in commissions and fees. Furthermore, the average hold period for the First Trust unit investments was approximately 67 days, contrary to the Complainant's stated investment objectives.

20. One Complainant opened an SEP IRA account, on or about January 19, 2002. On their new account form the Complainant indicated an investment objective of long-term growth. Additionally, the new account form indicates a "no" response to the question "Do investment objectives allow speculation?" One class "A" mutual fund valued at approximately \$11,931 was transferred into the account along with approximately \$3,345 in cash.

21. During the relevant time period, Grossman managed this account as follows:

- There were approximate 51 transactions resulting in a trade loss of approximately \$3,727;
- No security purchased during the relevant time period was held for a period greater than 12 months, contrary to the Complainant's stated investment objectives;
- Total aggregate purchases were approximately \$115,937.38 with an average account equity of approximately \$12,725.94 demonstrating a turnover rate of 9.11 and an average CEMR of 15.78%, contrary to the Complainant's stated investment objectives;
- There were 10 individual securities bought or sold, all of which were mutual funds or unit investment trusts; and
- There were purchases and sales of 2 class "B" mutual funds, Federated Capital Class, and John Hancock Regional Bank. Class "B" shares generally include higher expense ratios and contingent deferred sales charges. This type of investment is typically held for a long period of time because of its high rate of commissions and fees. The average hold period for these class "B" shares was approximately four (4) months, contrary to the Complainant's stated investment objectives.

22. One Complainant opened an IRA account, on or about January 28, 2002. On the new account form this Complainant indicated an investment objective of long-term growth. Additionally, the new account form indicates a "no" response to the question "Do investment objectives allow speculation?" Two class "A" mutual funds valued at approximately \$11,859 was transferred into this account.

23. During the relevant time period, Grossman managed this account as follows:

- There were approximately 33 trades resulting in a loss of approximately \$2,224;
- No security purchased during the relevant time period was held for a period greater than 12 months, contrary to the Complainant's stated investment objectives;
- Total aggregate purchases were approximately of approximately \$101,503.80 with an average equity of approximately \$10,206.13 demonstrating a turnover rate of 9.95 and an average CEMR of 11.9%, contrary to the Complainant's stated investment objectives;
- There were 12 individuals securities bought or sold, 11 of which were mutual funds or investment unit trusts;
- John Hancock Regional Bank and Bear Stearns Insider Fund, class "B" mutual funds, were purchased and sold on seven (7) occasions. Class "B" shares generally include higher expense ratios, contingent deferred sales charges and no entitlements to breakpoints. This type of investment is typically held for a long period of time because of its high rate of commissions and fees. The average hold period for the class "B" shares was approximately five (5) months, contrary to the Complainant's stated investment objectives; and
- There were six (6) First Trust unit investments bought or sold with short hold period. Total purchases of First Trust unit investments were approximately \$73,226 resulting in a loss to the Complainant of approximately \$1,937.87 and a profit to Grossman and Ryan Beck of at least \$2,560.64. This type of investment is typically held for a long period of time because of its high rate of commissions and fees. The average hold period for these First Trust unit investments was approximately three (3) months, contrary to the Complainant's stated investment objectives.

24. Complainants opened a second joint account, on or about January 27, 2002. On the new account form the Complainants indicated an investment objective of long-term growth. Additionally, the new account form indicates a "no" response to the question "Do investment objectives allow speculation?" Approximately \$163,904 in securities were transferred into the account along with \$298,334 in cash. The account was closed in April 2004.

25. During the relevant time period, Grossman managed this account as follows:

- There were approximately 76 transactions resulting in a trade gain of approximately \$12,615;
- No security purchased was held for more than a 12-month period, contrary to the Complainants' stated investment objectives.
- Total aggregate purchases were approximately \$404,142.30 with an average account equity of approximately \$98,582.05, demonstrating a turnover of 4.10 in the 17 months the account was active;
- In 2003 this account had a CEMR of 37.17%, contrary to the Complainants' stated investment objectives;
- Glacier Bancorp was bought or sold on at least 40 occasions between April 2002 and May 2003, contrary to the Complainants' stated investment objectives; and
- Three individual class "B" mutual funds, Federated High-Income Bond Fund, John Hancock Regional Bank, and John Hancock Government Income Fund, were purchased and sold. Class "B" shares generally include higher expense ratios, contingent deferred sales charges and no entitlements to breakpoints. Trading in class "B" mutual funds resulted in a loss to the Complainants of approximately \$2,170 while Grossman and Ryan Beck earned approximately \$3,253.15 in commissions and

fees. This type of investment is typically held for a long period of time because of its high rate of commissions and fees. The average hold period for the class "B" shares was approximately five 46 days, contrary to the Complainants stated investment objectives.

26. Complainants opened a third joint account, on or about February 26, 2002. On their new account form the Complainants indicated an investment objective of long-term growth. Additionally, the new account form indicates a "no" response to the question "Do investment objectives allow speculation?" Approximately \$50,000 in cash was transferred into the account. The account was closed in June 2002.

27. During the relevant time period, Grossman managed this account as follows:

- There were 2 unit investment trusts and one class "C" mutual fund purchased and sold. These types of investments are typically held for a long period of time because of their high rate of commissions and fees. These securities were held for an average of 40 days, contrary to the Complainants' stated objectives.
- While Complainants' lost approximately \$2,130 on these short-term investments, Grossman and Ryan Beck received commissions and fees of approximately \$3,839.67.

28. In the eight (8) accounts Grossman managed for Complainants he solicited a total of approximately \$3,685,337.32 in purchases of class "B" mutual funds. Complainants' sustained a loss on these investments of approximately \$96,163 while Grossman and Ryan Beck earned approximately \$126,521 in commissions and fees.

29. In the eight (8) accounts Grossman managed for Complainants he solicited the purchase of approximately \$2,072,515.62 in Federated Class "B" funds, and purchases of only

approximately \$273,550.46 in Class "A" shares. Had Complainants purchased all Federated Class "A" shares they would have been charged no fees on these purchases. Instead, Complainants paid a total of \$96,820.68 in fees for the purchase and sale of Federated class "A" and "B" shares.

30. In the eight (8) accounts in which Grossman managed for the Complainants he solicited the purchase of approximately \$457,478.77 in John Hancock Class "B" mutual funds, and purchases of only approximately \$125,487.77 in Class "A" shares. Had Complainants purchased all John Hancock Class "A" shares they would have been charged at a 2% fee rate, resulting in fees of approximately \$11,659.33. Instead, Complainants paid a total of approximately \$19,137.13 in fees for the purchase and sale of John Hancock class "A" and "B" shares.

31. In the eight (8) accounts in which Grossman managed for Complainants he solicited the purchase of \$280,523.07 in Sunamerica Class "B" mutual funds, and purchases of only \$100,539.02 in Class "A" shares. Had Complainants purchased all Sunamerica Class "A" shares they would have been charged at a 3% fee rate, resulting in fees of \$11,431.86. Instead, Complainants paid a total of \$14,819.52 in fees for the purchase and sale of Sunamerica class "A" and "B" shares.

32. According to Ryan Beck's Policy Manual, Part IV, Section 02.8 (dated May 2002),

[M]utual funds are generally designed to be long-term investment vehicles. Regulatory standards prohibit short-term in-and-out trading or switching between families of funds which result in additional commission charges.

33. Not one mutual fund purchase solicited by Grossman was held for more than a 12-month period, contrary to firm policy.

34. According to Ryan Beck's Policy Manual, Part IV, Section 02.6 (dated May 2002),

All mutual funds recommendations must be based on the client's investment objectives, financial needs and risk tolerance. Suitability is critically important in the sale of mutual funds . . . Factors which may determine suitability include: . . . whether the client qualifies for any reduction or waiver of any applicable sales charge.

35. Grossman failed to provide discounts that Complainants were entitled in relation to at least three mutual fund families, contrary to firm policy.

36. According to Ryan Beck's Policy Manual, Part IV, Section 02.7, (dated June 2003),

Ryan Beck Policy generally prohibits soliciting purchases of Class "B" mutual funds shares in excess of \$100,000. All purchases above \$100,000, and purchases that have aggregated above \$100,000, require the client to sign a "non-solicitation letter" confirming that such purchase is being made on an unsolicited basis. Solicitations in excess of \$100,000 must be limited to class "A" shares.

37. Grossman solicited the aggregate purchase of more than \$3,685,337 worth of Class "B" shares. The firm failed to provide the Complainants with any "non-solicitation letters", contrary to firm policy.

38. According to Ryan Beck's Policies Manual, Part IV, Section 02.8, (dated June 2003),

FCs {Financial Consultants} should observe the requirements concerning Mutual Fund switching. If a switch can be executed at NAV {Net Asset Value}¹⁰, FCs will not be required to obtain a Switch Letter. However, in all other instance, Mutual Fund Switch Letters must be signed by clients who concurrently sell one

¹⁰ In mutual funds NAV is the market value of a fund share. NAV is calculated by most funds after the close of the exchanges each day by taking the closing market value of all securities owned plus all other assets such as cash, subtracting all liabilities, then dividing the result by the total number of shares outstanding (Barron's Dictionary of Finance and Investment Terms, 361-62).

mutual fund and purchase another. Letters should be obtained for all transaction being effected and kept on file at the branch

39. Ryan Beck provided only three switch letters to the Department. A review of all mutual fund transactions in the Complainants' accounts indicate there were dozens of switches in which switch letters were not obtained, contrary to firm policy.

40. On or about February 7, 2003, Ryan Beck sent an interoffice memorandum to all branch office managers, including Freydberg, reminding them of Ryan Beck's mutual fund policy, and adding the following to that policy:

[E]nsure that clients are made aware of the difference between "A", "B" and "C" shares, etc, as they pertain to breakpoints, front-end and back-end charges and expense fees;

[E]nsure the availability of breakpoint discount when aggregating mutual fund positions maintained within and outside of Ryan Beck; and

[E]nsure the "family discounts" offered by mutual fund companies that allow clients to aggregate positions held by certain family members when calculating breakpoints.

41. The firm failed to adhere to these mutual fund policies in the Complainants' accounts.

42. On or about March 7, 2002, the Complainants purchased a Sun Life Annuity with an initial investment of \$250,000. They made an additional investment into this annuity of \$235,000 in September 2002. The annuity was liquidated in December 2003, resulting in surrender charges of \$25,145.42 to Complainants. The return on investment during this period was a loss of \$17,226.25. The total loss from the annuity was \$42,382.67. Complainants indicate they did not authorize this liquidation. Grossman failed to disclose surrender penalties associated with this product.

43. On or about June 21, 2004, six months after the sale of the Complainants' Sun Life Annuity, Grossman solicited the purchase of a new variable annuity, ING SmartDesign

Variable Annuity. This annuity incurs additional charges for the first seven (7) years of the contract. Complainants will pay significant surrender charges if they liquidate this annuity before 2011. One Complainant has recently suffered serious health problems. If liquidation of either of these annuities is needed within the next few years to pay for medical costs, Complainants will suffer significant surrender fees. Grossman failed to disclose surrender penalties associated with this product, despite his knowledge that one Complainant had serious medical issues.

44. Grossman solicited the purchase of two other variable annuities on behalf of Complainants, Venture Vantage, and Venture III, both through John Hancock. Both of these annuities were purchased on or about March 2002. One Complainant has recently suffered serious health problems. If liquidation of either of these annuities is needed within the next few years to pay for medical costs, Complainants will suffer significant surrender fees. Grossman failed to disclose surrender penalties associated with these products, despite his knowledge that one Complainant had serious medical issues.

45. According to Ryan Beck's Sales Procedures and Supervision manual, Part 3, Section 04.1.4:

The *Employee Price Comparison Report* is a daily computerized report which identifies securities that are purchased and/or sold by an FC and his or her clients on the same day. BOMs {Branch Office Managers} should look at the *Employee Price Comparison Report* for transactions effected by FC's in their own or related accounts in the same securities as their clients. BOMs should question FC's to determine if special circumstances existed resulting in the employee and/or a related account received a better price than the client. BOMs should take appropriate remedial action when employee and related accounts receive better prices than their clients. Unless special circumstances exist, the client should get the better price.

46. The Employee-Non-Employee Price Reports provided by Ryan Beck indicate that in every instance in which Grossman traded the same stock as his clients on the same day,

Grossman received the best price. An analysis of these trades indicates that the Complainants incurred additional charges of at least \$10,788.40, because Grossman received the better price. For example:

- On or about May 10, 2004, Grossman solicited the purchase of KFX, Inc. to Complainants'. Complainants' purchased 7,000 shares at a price of \$8.87/share. Grossman purchased KFX, Inc. on the same day at a price of \$8.42/share. This price difference resulted in Complainants being charged approximately \$3,150 more than they should have, contrary to firm policy.
- On or about March 17, 2004, Grossman solicited the purchase of KFX, Inc. to Complainants. Complainants purchased 5,050 shares at a price of \$9.15/share. Grossman purchased KFX, Inc. on the same day at a price of \$8.79/share. This price difference resulted in Complainants being charged approximately \$1,818 more than they should have, contrary to firm policy.

47. The March 11, 2004 *Employee-Non-Employee Price Comparison* report indicates that Grossman, along with three of his clients, including Complainants, purchased KFX, Inc. All three clients' trades were marked as "unsolicited". Further, other *Employee-Non-Employee Price Comparison* reports indicate KFX, Inc. was a security that was being purchased and sold often by various other clients of Grossman in substantially geographically disparate areas, indicating an act, practice and course of business that was inconsistent with "unsolicited" trading.

48. Complainants' accounts appeared on Ryan Beck's *Buy Trades in Low-Priced Securities* exception report 49 times during the relevant time period. A review of these reports indicates Grossman solicited acts consistent with day trading in low-priced and volatile stocks.

49. According to Ryan Beck's Policies and Procedures, Part 3, Section 04.2.2 (dated June 2003), The Global Active Accounts Review (GAAR), issued monthly, is provided to branch office managers to assist them in carrying out their supervisory reviews. This report identifies accounts attaining minimum levels of commissions and transactions for use by the branch office manager in determining the necessity for further review and/or client contact. The criteria used to initially appear on a GAAR report are as follows:

Reached a Commission-to-equity ratio of 3% or higher AND; accumulated a total of 10 or more transaction AND; generated a minimum of \$3,000 in gross commissions in the calendar year to date.

Accounts will reappear on the report within the same calendar year if they: continue to have a commission/equity ratio of 3% or more; AND attain gross commission levels of \$6,000, \$10,000, \$15,000 and \$25,000 and additional multiples of \$25,000 (accounts will drop off the GAAR Report in the following months until the next threshold is reached); AND reach at least \$1,000 in commissions since the last time they appear on the GAAR.

50. The accounts of Complainants appeared on the GAAR monthly reports 22 times during the relevant time period. These reports indicate that one of the Complainants' accounts had a yearly turnover rate of 10.72, with a cost-to-equity-maintenance ratio (CEMR)¹¹ of 28.15%. A second Complainants' account was listed as having a CEMR of 31.79%

51. Section 04.2.2 Part III, Ryan Beck & Co. Sales Practices and Supervision manual states

The Active Account Review Form provides the FC with an opportunity to fully explain in detail the activity in the account. Completion of the Monthly Activity Review Form by the FC and subsequent updates may be requested at any time at the discretion of the BOM or authorized designee who is responsible for reviewing the GAAR Report. However, when an account reaches the \$10,000 commission level, the Monthly Activity Review Form must be completed by the FC. (Emphasis added.)

When an account reaches the \$10,000 commission level, the Monthly Activity Review Form **must** reflect a BOM's contact with the client or notations setting further the reasons why contact was not deemed appropriate. The particular format of the "Activity Letters" used may vary with the level and nature of activity in the account and progressively more explicit letters may be used if multiple contacts seem in order (e.g., if a pattern of activity is observed and continues notwithstanding earlier contacts and cautions expressed to the client.) (Emphasis added.)

52. There were 12 instances in which the GAAR Reports indicate that the Complainants' accounts had commissions in excess of \$10,000 in a one-month period. No Active Account Review Forms or Activity Letters were generated for the Complainants' accounts, contrary to firm policy

CONCLUSIONS OF LAW

1. The Montana State Auditor is the Commissioner of Securities and Insurance (Commissioner) pursuant to §§ 30-10-107, 2-15-1903, and 33-1-301, MCA.

2. The Commissioner has jurisdiction over this matter pursuant to §§ 30-10-102, 30-10-107, 30-10-201, 30-10-301, 30-10-304, 30-10-305, 30-10-307, 33-1-102, 33-1-301, 33-1-317, 33-1-1302, 33-17-201, 33-17-1001, and 33-18-102, MCA.

3. The administration of the Securities Act of Montana, § 30-10-101, *et seq*, MCA, and is under the supervision and control of the Securities Commissioner. Section 30-10-107, MCA.

4. The Montana Insurance Department is under the control and supervision of the Commissioner pursuant to §§ 2-15-1902 and 33-1-301, MCA.

5. The Commissioner shall administer the Insurance Department to protect consumers, pursuant § 33-1-311, MCA.

6. The Commissioner shall administer the Securities Department to protect investors, pursuant to § 30-10-102, MCA.

7. Grossman is a Montana registered salesperson pursuant to § 30-10-103(20), MCA, and was so registered during the relevant time period

8. Grossman is a Montana licensed insurance producer pursuant to § 33-17-201, MCA, and was so licensed during the relevant time period.

9. Freyberg was a Montana registered securities salesperson pursuant to § 30-10-103(20), MCA, during the relevant time period.

10. Ryan Beck is a broker-dealer pursuant to § 30-10-103(1), MCA, and was registered as a broker-dealer firm pursuant to § 30-10-201(1), MCA, during the relevant time period.

11. Ryan Beck Life is a licensed Montana insurance agency pursuant to § 33-17-201, MCA.

12. Grossman violated § 30-10-301(1)(b), MCA, by misrepresenting the material facts regarding the securities transactions he made for Complainants in their Ryan Beck accounts including, but not limited to:

- a. Failing to inform Complainants that the trading strategy was excessive in nature and would result in high costs to the Complainants;
- b. Failing to inform Complainants that the trading strategy was excessive in nature and, contrary to the Complainants' stated investment objectives;
- c. Failing to inform Complainants of the true size and extent of the margin loan in one of the Complainants' joint accounts;

- d. Failing to inform Complainants that they were entitled to the better price when he purchased the same security on the same day as did the Complainants;
- e. Failing to inform Complainants that by purchasing Class "B" mutual funds fees would be much higher than if they purchased Class "A" shares and received their entitlements to breakpoints;
- f. Failing to inform Complainants when he marked trade tickets as "unsolicited" when Grossman did "solicit" the trades;
- g. Failing to disclose to Complainants of the type and amount of fees associated with annuities; and
- h. Failing to obtain authorization to liquidate the Complainants' Sun Life Annuity.

13. Grossman violated § 30-10-301(1)(c), MCA by engaging in an act, practice, and course of business that acted as a fraud on Complainants when he performed the following acts:

- a. The act, practice, and course of business, of executing thousands of trades for Complainants resulting in hundreds of thousands of dollars in commissions to himself and Ryan Beck, contrary to the Complainants' stated investment objective;
- b. The act, practice, and course of business, of purchasing both Class "A" and Class "B" shares in the same family of funds when Complainants would have received extensive discounts had Grossman solicited all Class "A" shares;

- c. The act, practice, and course of business, of excessively trading in mutual funds without grounds to believe that the transactions or recommendations were suitable for Complainants based upon reasonable inquiry concerning their investment objectives, financial situation or needs;
- d. The act, practice, and course of business, of giving himself the better price when purchasing the same security as Complainants;
- e. The act, practice, and course of business, of executing thousand of unsuitable transactions in the accounts of Complainants to his benefit and their detriment, contrary to the Complainants stated investment objectives;
- f. The act, practice, and course of business, of creating a margin loan in Complainants's accounts for the purpose of his foregoing fraudulent acts; and
- g. The act, practice, and course of business, of trading excessively in Complainants accounts based on their stated investment objectives and the other relevant information revealed in their new account forms with Ryan Beck.

14. Freydberg, pursuant to § 30-10-321, MCA, violated § 30-10-301(1)(b) MCA and § 30-10-301(1)(c) MCA, by providing substantial assistance to Grossman so that Grossman was able to violate § 30-10-301, MCA. This assistance was given by Freydberg when he:

- a. Allowed Grossman to make aggregate purchases in excess of \$100,000 in Class "B" mutual funds in Complainants' accounts;

- b. Allowed Grossman to make unsuitable recommendations in Class "B" mutual funds, when Complainants would have received breakpoints in Class "A" mutual funds;
- c. Allowed Grossman to excessively trade in mutual funds without grounds to believe that the transactions or recommendations were suitable for Complainants based upon reasonable inquiry concerning their investment objectives, financial situation or needs;
- d. Allowed Grossman to forego completion of at least 22 Active Account Review Forms when the Complainants' accounts were listed on the GAAR Reports;
- e. Failed to contact Complainants on at least 12 occasions when their accounts reached certain exception report criteria,
- f. Allowed Grossman to receive best execution;
- g. Allowed Grossman to engage in the practice of excessive trading which was contrary to the Complainants' investment objective; and
- h. Allowed Grossman to engage in the practice of trading in volatile and speculative companies, contrary to the Complainants' stated investment objectives.

15. Ryan Beck, pursuant to § 30-10-321, MCA, violated § 30-10-301(1)(b), MCA and § 30-10-301(1)(c), MCA by providing substantial assistance to Grossman so that Grossman was able to violate § 30-10-301, MCA. This assistance was given by Ryan Beck when the firm:

- a. Allowed Grossman to make aggregate purchases in excess of \$100,000 in Class "B" mutual funds in Complainants' accounts;

- b. Allowed Grossman to make unsuitable recommendations in Class "B" mutual funds, when Complainants would have received breakpoints in Class "A" mutual funds;
- c. Allowed Grossman to excessively trade in mutual funds without grounds to believe that the transactions or recommendations were suitable for Complainants based upon reasonable inquiry concerning their investment objectives, financial situation or needs;
- d. Allowed Grossman to forego completion of at least 22 Active Account Review Forms when the Complainants' accounts were listed on the GAAR Reports;
- e. Failed to contact Complainants on at least 12 occasions when their accounts reached certain exception report criteria;
- f. Allowed Grossman to receive best execution;
- g. Allowed Grossman to engage in the practice of excessive trading which was contrary to the Complainants' stated investment objective; and
- h. Allowed Grossman to engage in the practice of trading in volatile and speculative companies, contrary to the Complainants' stated investment objectives.

16. Grossman violated § 30-10-201(13)(g), MCA, and ARM § 6.10.126(2)(f), by engaging in a dishonest or unethical practice when he:

- a. Recommended unsuitable trading in speculative, volatile securities with little or no historical financial results or track record to the Complainants, contrary to their stated investment objectives of long-term growth;

- b. Induced trading in the Complainants' multiple accounts which was excessive in size or frequency in view of their investment objectives and character of their account; and
- c. Induced trading in the Complainants' multiple accounts, charging them excessive fees of more than \$900,000 in commissions and fees during a thirty-six (36) month period.

17. Freydberg violated § 30-10-201(13)(k), MCA, by failing to reasonably supervise Grossman when he:

- a. Allowed Grossman to make aggregate purchases in excess of \$100,000 in Class "B" mutual funds in Complainants' accounts;
- b. Allowed Grossman to make unsuitable recommendations in Class "B" mutual funds, when Complainants would have received breakpoints in Class "A" mutual funds;
- c. Allowed Grossman to excessively trade in mutual funds without grounds to believe that the transactions or recommendations were suitable for Complainants based upon reasonable inquiry concerning their investment objectives, financial situation or needs,
- d. Allowed Grossman to forego completion of at least 22 Active Account Review Forms when the Complainants' accounts were listed on the GAAR Reports;
- e. Failed to contact Complainants on at least 12 occasions when their accounts reached certain exception report criteria;
- f. Allowed Grossman to receive best execution;

- g. Allowed Grossman to engage in the practice of excessive trading which was contrary to the Complainants' stated investment objectives; and
- h. Allowed Grossman to engage in the practice of trading in volatile and speculative companies, contrary to the Complainants' stated investment objectives.

18. Ryan Beck violated § 30-10-201(13)(k), MCA, by failing to reasonably supervise Grossman when the firm:

- a. Allowed Grossman to make aggregate purchases in excess of \$100,000 in Class "B" mutual funds;
- b. Allowed Grossman to make unsuitable recommendations in Class "B" mutual funds, when Complainants would have received breakpoints in Class "A" mutual funds;
- c. Allowed Grossman to excessively trade in mutual funds without grounds to believe that the transactions or recommendations were suitable for Complainants based upon reasonable inquiry concerning their investment objectives, financial situation or needs;
- d. Allowed Grossman to forego completion of at least 22 Active Account Review Forms when the Complainants' accounts were listed on the GAAR Reports;
- e. Failed to contact Complainants on at least 12 occasions when their accounts reached certain exception report criteria;
- f. Allowed Grossman to receive best execution;

- g. Allowed Grossman to engage in the practice of excessive trading which was contrary to the Complainants' stated investment objective; and
- h. Allowed Grossman to engage in the practice of trading in volatile and speculative companies, contrary to the Complainants' stated investment objectives.

19. Ryan Beck violated § 30-10-201(13)(i), MCA, by failing to timely respond to the Department's request for information pursuant to its investigation of Complainants' allegations.

20. Grossman violated § 33-1-1302, MCA, when he solicited purchases of four different variable annuities misrepresenting the material fact that Complainants may be subjected to costly surrender penalties. Grossman's misrepresentation was made with reckless indifference regarding the misrepresentation when he knew that one Complainant suffered from cancer and was likely to require liquidation of one or more of the variable annuities to pay for medical costs. Grossman made the misrepresentation with the intention of causing Complainants to rely upon his solicitation and such reliance was a detriment to the Complainants.

21. Grossman violated § 33-1-1302, MCA, when he liquidated the Complainants' Sun Life variable annuity without their knowledge. Grossman made a material misrepresentation that he intended the variable annuity to be a long-term investment for Complainants. Grossman's material misrepresentation was made with reckless indifference as to the fact that by liquidating this variable annuity Complainants were subjected to high surrender penalties.

22. Grossman violated § 33-1-1302, MCA, when he managed the Complainants' Venture Vantage variable annuity within their profit sharing account, subjecting those funds to high surrender penalties and additional unnecessary tax consequences. Grossman managed this variable annuity within the profit sharing account for the purpose of masking the losses in the

account, making the material misrepresentation that the profit sharing account and the variable annuity were being managed pursuant to the Complainants' investment objectives. Grossman made the misrepresentation with reckless indifference as to the misrepresentation and for the purpose of causing Complainants to rely upon his misrepresentations regarding his management of their profit sharing account and variable annuity, which was to Complainants' detriment.

23. Grossman violated § 33-1-1302, MCA, when he managed Complainants' Venture III variable annuity within Complainants' joint account for the purpose of masking losses in the account, making the material misrepresentation that the joint account and variable annuity were being managed pursuant to the Complainants' investment objectives. Grossman made the misrepresentation with reckless indifference as to the misrepresentation and for the purpose of causing Complainants to rely upon his misrepresentations regarding his management of their joint account and variable annuity, which was to Complainants' detriment.

24. Grossman is in violation of § 33-17-1001(1)(c), MCA and ARM § 6.6 805(1), by failing to provide specific information relevant to the insurance product he was offering to the Complainants, including the cost of surrender penalties associated with the variable annuities he purchased on behalf of Complainants.

25. Grossman is in violation of § 33-17-1001(1)(f), MCA in that, while in the conduct of the affairs under the insurance producer license, Grossman used fraudulent, coercive, or dishonest practices or was otherwise incompetent, untrustworthy, financially irresponsible, or a source of injury and loss to the public.

26. Ryan Beck Life is in violation of § 33-17-1001(2), MCA, because Grossman is its affiliate authorized to act on its behalf and Grossman violated § 33-17-1001(1), MCA as indicated above.

RELIEF SOUGHT

1. Order Grossman, Ryan Beck, and Freydborg to pay restitution to the victims in this case, including 10% interest from the date of the wrong-doing, pursuant to § 30-10-309, MCA.
2. Order Respondent Grossman to pay fines not to exceed \$5,000 for each identifiable violation of § 30-10-301(1)(b), MCA, pursuant to § 30-10-305(3), MCA.
3. Order Respondent Grossman to pay fines not to exceed \$5,000 for each identifiable violation of § 30-10-301(1)(c), MCA, pursuant to § 30-10-305(3), MCA.
4. Order Respondent Grossman's registration and license in Montana suspended and or revoked for violating the provisions of § 30-10-301(1)(b), MCA, and § 30-10-301(1)(c), MCA, pursuant to § 30-10-201(13)(b), MCA.
5. Order Respondents Ryan Beck and Freydborg to pay fines not to exceed \$5,000 for each identifiable violation of § 30-10-321, MCA, pursuant to § 30-10-305(3), MCA.
6. Order Respondent Ryan Beck's registration and license in Montana suspended and or revoked for violating the provisions of § 30-10-321, MCA, pursuant to § 30-10-201(13)(b), MCA.
7. Order Respondents Ryan Beck and Freydborg to pay fines not to exceed \$5,000 for violating § 30-10-201 (13) (k), MCA, pursuant to § 30-10-201(18), MCA;
8. Order Respondent Grossman to pay fines not to exceed \$5,000 for each identifiable violation of § 30-10-201(13)(g), MCA, and ARM § 6.10.126(2)(f), pursuant to § 30-10-201(18), MCA;
9. Order Respondent Grossman to pay fines not to exceed \$5,000 for each identifiable violation of § 33-1-1302, MCA, pursuant to § 33-1-317, MCA;

10. Order Respondent Grossman to pay fines not to exceed \$5,000 for each identifiable violation of § 33-17-1001, MCA, pursuant to § 33-1-317, MCA.

11. Order Respondent Grossman's insurance producer's license suspended or revoked for violating § 33-17-1001, MCA, pursuant to § 33-17-1001, MCA.

12. Order Respondent Ryan Beck Life to pay fines not to exceed \$5,000 for each identifiable violation of § 33-17-1001, MCA, pursuant to § 33-1-317, MCA.

13. Order Respondent Ryan Beck Life's insurance agency license suspended or revoked for violating § 33-17-1001, MCA, pursuant to § 33-17-1001, MCA.

14. Any other such relief allowed by law or required by justice.

PUBLIC INTEREST

For any and all of the reasons set forth above, it is in the public interest and will protect Montana investors and Montana insurance customers to:

1. Issue a cease and desist order barring Ryan Beck, Grossman, and Freydborg from further violations of the Act,

2. Suspend or revoke Ryan Beck's broker-dealer license;

3. Suspend or revoke Grossman's salesperson registration;

4. Suspend or revoke Grossman's insurance producer's license;

5. Suspend or revoke Ryan Beck Life's insurance agency license;

5. Order Grossman, Ryan Beck, Ryan Beck Life, and Freydborg to pay administrative fines in an amount and upon such terms and conditions as supported by the evidence and determined at hearing of this matter;

6. Order Grossman, Ryan Beck, Ryan Beck Life, and Freydborg to pay restitution to Complainants in an amount and upon such terms and conditions, including the statutory 10% per

annum interest on the losses Complainants incurred, as supported by the evidence and determined at hearing of this matter; and

7. Take such other actions which may be in the public interest and necessary and appropriate for the protection of Montana investors.

STATEMENT OF RIGHTS

You are entitled to a hearing to respond to this notice, present evidence and arguments on all issues involved in this case. You have a right to be represented by an attorney at any and all stages of this proceeding. You may demand a formal hearing before a hearing examiner appointed by the Commissioner pursuant to the Montana Administrative Procedure Act, sections 2-4-601, MCA, and following, including Section 2-4-631, MCA. If you demand a hearing, you will be given notice of the time, place and the nature of the hearing.

If you want to contest the proposed action under the jurisdiction of the Commissioner, you must advise the Commissioner within fifteen (15) days of the date you receive this notice. You must advise the Commissioner of your intent to contest the proposed action by writing to Roberta Cross Guns, Special Assistant Attorney General, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601. Your letter must clearly indicate whether you demand a hearing, or whether you waive formal proceedings and, if so, what informal proceedings you prefer for disposition of this case. Pursuant to Section 2-4-603(2), MCA, you may not request to proceed informally if the action could result in suspension, revocation or any other adverse action against a professional license. Should you request a hearing on the matters raised in this Notice, a hearing must be held within 45 days of the request, unless postponed by mutual consent of the parties, pursuant to § 33-1-701 (2), MCA.

Should you request a hearing, you have the right to be accompanied, represented, and advised by counsel. If the counsel you choose has not been admitted to practice law in the state of Montana, he or she must comply with the requirements of Application of American Smelting and Refining Co., (1973), 164 Mont. 139, 520 P.2d 103.

CONTACT WITH SECURITIES COMMISSIONER'S OFFICE

If you have questions or wish to discuss this matter, please contact Roberta Cross Guns, legal counsel for the State Auditor, at 840 Helena Avenue, Helena, MT, 59601, (406)-444-2040 or, within Montana. (800)-332-6148. If an attorney represents you, please make any contacts with this office through your attorney.

POSSIBILITY OF DEFAULT

Failure to give notice or to advise of your demand for a hearing or informal procedure within fifteen (15) days, will result in the entry of a default order imposing the disciplinary sanctions against you and your license, without further notice to you, pursuant to 6.2.101, Administrative Rules of Montana and the Attorney General's Model Rule 10.1.3.214.

DATED this 2nd day of September 2005.

JOHN MORRISON
State Auditor and ex-officio
Commissioner of Securities and Insurance

By: Roberta Cross Guns
Roberta Cross Guns
Special Assistant Attorney General